



DEPARTMENT OF THE NAVY

COMMANDER
NAVY REGION, MID-ATLANTIC
1510 GILBERT ST.
NORFOLK, VA 23511-2737

IN REPLY REFER TO:

COMNAVREGMIDLANTINST 1640.10C

00L

12 APR 2006

COMNAVREG MIDLANT INSTRUCTION 1640.10C

From: Commander, Navy Region, Mid-Atlantic

Subj: INITIAL REVIEW OFFICER PROGRAM

Ref: (a) JAGMAN 0127
(b) Manual for Courts-Martial (2002)

Encl: (1) Sample IRO Nomination Letter
(2) Sample IRO Appointing Letter
(3) Sample Request for Reconsideration

1. Purpose. To set forth procedures to review confinement of servicemembers awaiting trial by courts-martial; to establish guidelines for nominations of officers in the pay grade of O-4 or higher to serve as Initial Review Officers (IRO) pursuant to reference (a); and to establish guidelines and procedures for the review of an IRO's decision to maintain a servicemember in pre-trial confinement prior to referral of the charges when, in accordance with Rule for Courts-Martial (R.C.M.) 305(j) of reference (b), authority to act passes to military judge.

2. Cancellation. COMNAVREMIDLANTINST 1640.10B.

3. Background. Per reference (a), the officer exercising general court-martial jurisdiction at the location of the confinement facility shall designate one or more officers of the pay grade O-4 or higher to act as the IRO for purposes of R.C.M. 305(i) (2), reference (b). The officers designated as IROs should be neutral and detached, should be selected for their maturity and experience, and, if practicable, should have command experience. Rule for Courts-Martial 305, of reference (b), provides that the RO shall, after notice to the parties, reconsider the decision to confine the prisoner upon request based upon any significant information not previously considered.

12 APR 2005**4. Action**

a. Commands listed below are requested to submit written nominations of officers to serve as IROs utilizing the format provided in enclosure (1):

| <u>COMMAND</u> | <u>DAYS PER MONTH</u> | <u>GRADE</u> |
|----------------------------|-----------------------|--------------|
| COMNAVREGMIDLANT PDs & ICs | 2 | O-4 or above |
| COMNAVAIRLANT | 2 | O-4 or above |
| COMNAVSURFLANT/PHIBGRU 2 | 2 | O-4 or above |
| COMSUBLANT | ½ | O-4 or above |
| NAVMEDCEN Portsmouth | 1 | O-4 or above |
| Other Volunteers | ½ | O-4 or above |

Commands providing half-days will stand 1 IRO-day every other month.

b. If impracticable to provide an officer with command experience, an officer will be nominated who has served at least 1 year of duty as a department head. For these purposes, duty as an Officer in Charge (OIC) of a detachment will be considered command experience. An officer whose duties require frequent TAD shall not be nominated as an IRO.

c. Nominees will be appointed in the format provided in enclosure (2). Once appointed, an officer will remain an IRO until 1 month prior to their permanent rotation date, unless sooner removed and replaced by their Commanding Officer (CO) or Commander, Navy Region, Mid-Atlantic (COMNAVREG MIDLANT).

d. Upon notification of appointment, IROs shall familiarize themselves with the reference materials attached as enclosures to the appointing letter and thereafter will contact the Staff Judge Advocate (SJA), COMNAVREG MIDLANT, for briefing on assigned duties. Newly appointed IROs are required to observe at least one proceeding prior to sitting as an IRO.

12 APR 2006

e. Clerical support for the IRO will be provided by the Naval Brig (NAVBRIG), Norfolk, which will maintain a copy of the documents considered and memorandum prepared in each case until completion of appellate review, and shall forward a copy to the COMNAVREG MIDLANT SJA.

f. The COMNAVREG MIDLANT SJA will act as training officer, Watchbill Coordinator, and as liaison with Naval Legal Service Office (NAVLEGSVCOFF), Mid-Atlantic; Trial Service Office (TRISCVCOFF), East; and Navy-Marine Corps Trial Judiciary, Tidewater Judicial Circuit.

5. Unavailability of IROs. Initial Review Officers shall advise COMNAVREG MIDLANT SJA no later than the 15th day of the preceding month when TAD or leave has been scheduled. This allows the Watchbill Coordinator to accommodate the requester when publishing the Watchbill. Except as noted below, failure to notify the Watchbill Coordinator prior to publication of the Watchbill of planned leave and TAD will necessitate cancellation of leave or TAD, unless the IRO assigned duty provides a workable solution to the Watchbill Coordinator. An IRO unable to fulfill the assigned duty days due to bona fide emergency or operational necessity will advise the COMNAVREG MIDLANT SJA.

6. General hearing Procedures. Although appointed by COMNAVREG MIDLANT, IROs derive their powers directly from the Secretary of the Navy. In the exercise of their judgment, IROs are not subject to the control or direction of the Commander or any CO. The IRO has the power to initiate and control the proceedings of pretrial confinement review hearings, to order the release or retention of an accused in pretrial confinement, and, if ordering release, to recommend to the CO of the accused that lesser forms of restraint be imposed. The decisions of the IROs are reviewable only by the military judge upon motion for appropriate relief.

a. Unless personal appearance is waived in writing, the accused shall be present at the hearing and shall be advised of applicable rights under article 31, Uniform Code of Military Justice. In addition, the IRO shall advise the accused of the purpose of the hearing, the right to present evidence as to

1 2 APR 2006

whether confinement should continue, that the evidence may be oral or written - sworn or unsworn, and of any evidence the IRO intends to consider in deciding whether pretrial confinement will continue.

b. A representative of the command is encouraged to appear before the IRO to make a statement. Witnesses for the accused may appear. However, they will not be entitled to travel, or similar expenses, and the hearing will not be delayed to permit their presence.

c. Upon request, the accused will be detailed a military counsel by the appropriate detailing authority. Such counsel may be appointed solely for the purpose of the IRO hearing. The IRO hearing shall not take place until such counsel is present. If the accused already has appointed or retained counsel, the IRO shall afford such counsel an opportunity to be present at the hearing and to speak on behalf of the accused.

d. With the exception of the Military Rules of Evidence (M.R.E.), Section V (privileges), M.R.E. 302 (mental examinations), and M.R.E. 305 (warning about rights), the M.R.E. shall not apply to the matters considered. The proceedings are informal and non-adversarial. There is no right to confront or cross-examine witnesses. The IRO may request additional information about the case, but in no event shall the decision concerning the release be delayed significantly after commencement of the initial hearing without express concurrence of the accused and counsel, if any. The requirements for continued pretrial confinement must be proved by a preponderance of the evidence.

e. The IRO shall decide whether the accused should remain in pretrial confinement, promptly following the conclusion of the hearing and shall properly record the decision by written a memorandum that sets forth the factual findings on which the decisions was based.

f. A decision of the IRO that the accused should be released from confinement is final and binding upon the CO of the accused, the confinement facility, and the general courts-martial convening authority. Once the IRO has ordered the accused's release, a DD Form 367 (Prisoner Release Order) will be typed and signed by the confinement facility for the

immediate release of the accused to his/her parent command or Transient Personnel Unit (TRANSITPERSU), Norfolk, if necessary. No administrative appeal of the IRO's decision to release the accused is authorized.

g. An IRO shall, upon request and after notice to the parties, reconsider the decision to continue confinement based upon any significant information not previously considered. Any prisoner, either personally or through counsel, may submit a written request to reconsider the decision to approve his continued confinement. This written request should be submitted to the IRO who originally reviewed the confinement decision and should describe the significant information not previously considered. Copies of this request must be submitted to the confining authority, NAVBRIG Norfolk, and COMNAVREG MIDLANT. Requests that fail to comply with the foregoing requirements may be returned for additional information and resubmission. If the original RO is not reasonably available to reconsider the request, then the prisoner should notify the COMNAVREG MIDLANT SJA for assignment of another RO. The reviewing authority will use the format contained in enclosure (3) to respond to any request for reconsideration.

h. The IRO's conclusions, including the factual findings on which they were based, shall be set forth in a written memorandum.

7. Post-Decision Procedures

a. Notwithstanding a decision by the IRO that the accused should remain in pretrial confinement, the CO of the accused may direct the accused's release. The CO of the accused may thereafter impose any form of restraint, other than confinement, which is authorized by military law and deemed necessary by that CO.

b. If an accused has been released from pretrial confinement, pursuant to the decision of the IRO, the CO of the accused may thereafter impose any form of restraint, other than confinement, which is authorized by military law and deemed necessary by that CO.

12 APR 2006

c. Once released, pursuant to the decision of the IRO, an accused may not be re-confined before completion of the trial except upon discovery, after the order of release, of evidence or misconduct that, either alone or in conjunction with all other available evidence, justifies confinement.



F. R. RUEHE

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S-A-M-P-L-E

[Command Letterhead]

1640
Ser
Date

From: [Commanding Officer, Command Name]
To: Commander, Navy Region, Mid-Atlantic (Code 00L)
Subj: NOMINATION TO SERVE AS INITIAL REVIEW OFFICER (IRO)
Ref: (a) COMNAVREGMIDLANTINST 1640.10C

1. Per reference (a), the following individual is nominated to serve as IRO:

[Rank/First Name/MI/Last Name], USN
[Title]
[Office Phone Number]
[Fax Number, if available]

[Signature Block]

COMNAVREGMIDLANTINST 1640.10C
1 2 APR 2005

S-A-M-P-L-E

[Command Letterhead]

1640
Code 00L1
Date

From: Commander, Navy Region, Mid-Atlantic
To: [IRO Nominee], USN
Via: Commanding Officer, [Command Name]

Subj: APPOINTMENT AS INITIAL REVIEW OFFICER (IRO) FOR PRETRIAL
CONFINEMENT HEARINGS

Encl: (1) IRO Training Manual

1. You are hereby appointed as Initial Review Officer to review the pretrial confinement of prisoners ordered to the Naval Brig (NAVBRIG), Norfolk.

2. You are directed to read and become well versed in the contents of enclosure (1), which contains the procedures for the review of pretrial confinement. If you require further information, contact my Staff Judge Advocate at DSN 262-2934 or commercial (757) 322-2934, for a briefing concerning your duties.

[Signature Block]

Copy to: (w/o enclosures)
NAVBRIG Norfolk
NAVLEGSVCOFF MIDLANT
TRISCVOFF East
[Nominee's Command Name] (Legal)

Enclosure (2)

COMNAVREGMIDLANTINST 1640.10C
12 APR 2005

S-A-M-P-L-E

SSIC
Date

From: [Name of Reviewing Officer]
To: [Name of Prisoner]
Via: Commanding Officer, Naval Brig, Norfolk

Subj: REQUEST TO RECONSIDER DECISION TO CONTINUE CONFINEMENT

Ref: (a) Your ltr of [date]

1. After careful consideration of the information provided in reference (a), I have reconsidered the decision to continue your confinement and have determined that (circle as appropriate):

a. Continued confinement is appropriate and approved.

or

b. Continued confinement is not warranted and you are hereby ordered released.

[Signature Block]

Enclosure (3)